

THE OATH: GENESIS, DEVELOPMENT AND AUGUSTINIAN ORIENTATION - A REVISITATION IN THE LIGHT OF RECENT SCHOLARSHIP

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ABSTRACT¹¹²²

Observing that oaths are commonplace and that they are utilized in a variety of situations, the paper attempts to throw some light on the phenomenon of the taking of oaths to attempt to come to grips with its widespread use. In order to fully understand this social reality it embarks on a short systematic synthesis of the theoretical basis which has been employed both, to justify the use of this singular institute, and conversely, to uphold and solicit its total abolition. After focusing on a short exposition of various types and categories of oaths, the paper proceeds with a short outline of the institute's chequered history discussing its genesis, evolution and interpretation under various cultures. Finally, it analyzes Saint Augustine's outlook based as it is both on sound philosophical and theological premises, and on his unique practical exposition of the subtleties involved as based on his particular interpretation of Christian love. This outlook may be said to have ultimately rehabilitated this phenomenon in the Christian world.

KEYWORDS: OATHS – PHILOSOPHY OF LAW – SAINT AUGUSTINE

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THE OATH: GENESIS, DEVELOPMENT AND AUGUSTINIAN ORIENTATION

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1. Introduction

The taking of oaths or of solemn affirmations¹¹²³ is commonplace, almost routine. Generally speaking, it can easily be observed in; judicial proceedings, where witnesses and court appointed experts are invited to have their say; the profession of solemn vows by members of religious orders and of vows of other secular professions;¹¹²⁴ varying degrees of official pomp and circumstance, when state and public officials are sworn into public office; as well as when effecting a change in one's personal civil status.

But, why is this particular action – *the taking of an oath* – deemed essential for the validity of whatever is being affirmed? Why does civil society deem it necessary to resort to this particular device when other approaches may achieve the same effects but with less draconian sanctions? Why has this institute found common fertile ground and consequent sound adoption and adaptation in both lay and secular institutional arrangements, and this, in various historical epochs, and at the same time, against authoritative advice to the contrary? Surprisingly, the present all-pervasive acceptance of the oath, or its substitute, as a binding legal instrument, has not always been as widely appreciated. Even within the present unsympathetic social environment, one's recourse to the oath or, to its more recent substitute, still seems to solicit further re-thinking as to its pervasive utility.

Before achieving the extant pervasive standing witnessed today, this institute has had to pass through the sieve of strict intellectual disquisition in order to see what it exactly is. Experience shows that its extensive use was generally deemed crucial in order to reap the benefits it offers. Through proven positive results witnessed by past generations, civil society opted in its majority to somehow recover, and perhaps at times, re-invent, this institute by adapting it to a variety of circumstances for the benefit of social cohesion.

¹¹²³ In Malta *Oaths* and *solemn affirmations* may now be used interchangeably as per Affirmations Act, Chapter 245 of the Laws of Malta. The latter obviously avoids reference to the Divinity and relative moral consequences. What is solemnly affirmed is limited to one's own conscience.

¹¹²⁴ A well-known example is the taking of the Hippocratic Oath, (dating to the IV Century B.C.E.), by medical doctors.

This necessity simply grew because of the realization that very often, ordinary statements are considered unreliable. The simple remedy offered by this institute proves to be necessary and crucial. Indeed, common worldly wisdom shows that very often, mankind tends to fib. Experience has shown that people simply do not trust each other and do not always believe in the truthfulness of statements uttered. As Martenson says, 'Lying and mutual distrust are with us, and so from ancient times the oath has been used as a guarantee for truthfulness.'¹¹²⁵

Succinctly, the taking of an oath is merely an attempt to overcome this innate immobilizing effect that statements have over mankind until such statements are accepted as *certain*, *accurate*, and *truthful*. In essence, an oath is merely tantamount to the summoning up of divine presence to be witness to the binding effect of a promise or, to the truth of a statement of fact. The divinity is invoked to act as guarantor of the oath-taker's honesty and integrity.

As Prodi emphasises, the oath occupies a particular place in our social reality nestled as it is between the specific spheres of *religion* and *politics*. Accordingly, he emphasises that the oath's intimate connection with these dual social realities actually goes so far as to define the 'specificity and vitality of Western Christian culture'.¹¹²⁶ Language is therefore seen and utilised as the basis for consolidating the resultant political pact which emerges as central to the history of the West. Yet, notwithstanding all this, today things seem to be changing. One seems to be witnessing a slow but dynamic shift within our collective realities whereby society seems to be gradually moving away from upholding the centrality of the oath as being the beacon of political commitment.

2. The Essential Function, Forms and Categories of the Oath

A quick reference to authoritative writings is essential to be able to help us orient ourselves in this regard. The author of the Letter to the Hebrews clearly emphasised that 'Men, of course, swear an oath by something greater than themselves, and between men, confirmation by an oath puts an end to all dispute.'¹¹²⁷ Hierocles,¹¹²⁸ a Neoplatonic philosopher, goes so far as to actually affirm that the oath completes the Law. He held,¹¹²⁹

¹¹²⁵ Neff, Christian, Harold S. Bender and William Klassen, 'Oath' 3.

¹¹²⁶ Paolo Prodi, *Il sacramento del potere: Il giuramento politico nella storia costituzionale dell'Occidente* (Il Mulino 1992) 52.

¹¹²⁷ Hebrews 6: 16.

¹¹²⁸ Greek Stoic philosopher of the 2nd century.

¹¹²⁹ Rudolf Hirzel, *Der Eid: Ein Beitrag zu seiner Geschichte* (Hirzel 1902) 74; Noël Aujoulat, *Le neoplatonisme alexandrine: Hierocles d'Alexandrie: Filiations intellectuelles et spirituelles d'un neoplatonicien* (Brill 1986) 109-10.

We have previously shown that the law (nomos) is the always uniform operation by means of which God eternally and immutably leads everything to existence. Now we call oath (horkos) that which, following this law, conserves all things in the same state and renders them stable in such a way that, as they are held in the guarantee of the oath and maintain the order of the law, the immutable stability of the order of creation is the completion of the creating law.

By implication, it seems obvious that the oath does not create anything original. All it seems to do is that it conserves something which is already existent. In his *De Officiis* Cicero defines the word oath as,

Sed in jure jurando non qui metus, sed quae vis sit, debet intellegi; est enim jus jurandum affirmation religiosa; quod autem affirmate quasi deo teste promiseris, id tenendum est. Iam enim non ad iram deorum, quae nulla est, sed ad justitiam et ad fidem pertinent...¹¹³⁰

He emphasises that the true function of the oath is the stability it generates when it guarantees that which is being affirmed. And it does so, not because it infuses the temerity of the gods – *quae nulla est*, but because through the affirmation or pronouncement that is made, one creates a just obligation which has to be fulfilled in good faith. Synthetically, what is promised is to be fulfilled.

Benveniste clearly held that the oath,

... is a particular modality of assertion, which supports, guarantees, and demonstrates, but does not found anything. Individual or collective, the oath exists only by virtue of that which it reinforces and renders solemn: a pact, an agreement, a declaration. It prepares or concludes a speech act which alone possesses meaningful content, but it expresses nothing of itself. It is in truth an *oral rite*, often completed by a manual rite whose form is variable. Its function consists not in the affirmation that it produces, but in the *relation* that it institutes between the word pronounced and the potency invoked.¹¹³¹

The swearing of oaths is therefore seen as an action whereby certainty as to the content held within the statement under review is achieved. In this way, the common good is attained with confidence and social stability is ensured.

¹¹³⁰ Marco Tullio Cicerone, *De Officiis: Quel che e' giusto fare* (Einaudi 2012) 292-293.

¹¹³¹ Emile Benveniste, 'L'expression du serment dans la Grece ancienne' (1947) 134 *Revue de l'Histoire des Religions* 81, 81-82.

In this particular regard St. Thomas comes in very handy as he distinguishes between scientific truth and the truth of man-made statements.¹¹³² Succinctly, he emphasises that in matters of *science*, confirmation of a statement is achieved by reasoning from premises of natural knowledge that are infallibly true and provable. There can therefore be no discordant dispute in this regard. However, in matters concerning particular facts of the contingent doings of man, confirmation cannot necessarily depend on reasoning alone. Before being wholeheartedly accepted as truthful, these so-called facts usually require further confirmation through independent extrinsic means necessarily involving the introduction of witnesses. However, here too St. Thomas wisely offers a word of caution. He emphasises that even human testimony may again not be sufficient for such confirmation of the truth, and this, because of lack of truthfulness in man, as very many fall into lying, and lack of knowledge, as man can neither know the future; nor the secret thoughts of the heart; nor yet, that which is distant or far away.

St. Thomas concludes that notwithstanding these inherent pitfalls, it is still expedient that *certainly*, *accuracy* and *truthfulness* should be established in this specific realm of human relationships. Through oaths, human beings overcome the deficiencies of the faith they might have in others. Therefore, in this particular respect, he argues, it is still necessary to recur to the witness of God to vouch for the truth of one's statement, for it is only God who cannot lie and from whom nothing can be hidden. It is because mankind craves for security in human relationships that it may overcome this innate limitation by taking recourse to Divine witness.

However, although actions may be good in themselves, as always, much depends on the actual use that is made of these actions. Any action, although good in itself, may be turned into evil if not used properly. So is the case with oaths! It therefore goes without saying that an oath must therefore never uphold a falsehood. It may likewise never be used to bear witness to anything that is not lawful. Otherwise, it would be a contradiction in terms.

An oath therefore usually occurs at that solemn moment where, through some particular formula or invocation, one summons none other than *God Himself* as witness to the *truth* of the statement that is being uttered. In so doing, one is calling upon the strongest possible confirmation of the truth of what is being affirmed, calling upon none other than God Himself to be at one and the same time:

¹¹³² Aquinas, *Summa Theologica*, IIa-IIae, 1274.

- a) *Witness*: to the truth of what is being uttered;
- b) *Protector*: of the truthfulness of the statement being made; and finally,
- c) *Avenger*: in case of the uttering of an untruth.

However, it is also fair to point out that as Simon Greenleaf warned, and this is diametrically opposite to the position held by Cicero, 'The design of the oath is not to call the attention of God to man; but the attention of man to God; - not to call Him to punish the wrong-doer; but on man to remember that He will.'¹¹³³

That an oath is a lawful or virtuous thing in itself is evident in its origin and end. Originally, oaths were resorted to in the belief that God, (or the Divine), is the depository of infallible truth; possesses a universal knowledge; and, exercises a universal providence over all things. As to its finality, an oath should only be taken to justify man when man's mind is made up and to put a definite end to disputes. Furthermore, oaths should never be taken lightly. A cavalier attitude would betray a serious lack of reverence towards God.¹¹³⁴ This is so as when oaths are resorted to, it is actually the reverence of the witness of God that is invoked. The person making use thereof is bound to use his willed discretion and make true what he has sworn. Furthermore, with oaths there is always the lurking danger of committing perjury!

Even etymologically, the closely linked verb 'to swear', though not quite linguistically clear, still betrays its Old Teutonic connection with the verb 'to answer', in this particular case, to the Divinity invoked. Interestingly enough, the Latin *jurare* - 'to swear' - evokes the English word 'jury' which has evolved into a particular legal institute whereby common citizens are sworn into a particular office of responsibility so that they may determine, as peers, whether an accused who is facing criminal¹¹³⁵ proceedings may be declared guilty as indicted.

Oaths are therefore more than simple instruments. They establish subtle terms of interaction, determine the language of the community, and delineate the limits of trust between individuals and groups.

An oath is that act or word which is used to promise or ascertain something in the name of the Divine. Such act, like all other conscious behaviour of man, equally requires that same exercise of the perpetrator's will before acquiring that validity so necessary to assume or be labelled with the responsibility for

¹¹³³ Simon Greenleaf, *A Treatise of the Law of Evidence* (16th edn, Boston, Little, Brown and company 1889) 50.

¹¹³⁴ As Ecclesiasticus 23: 9 warns 'Do not accustom your mouth to swearing, nor get into the habit of naming the Holy One.'

¹¹³⁵ In common law countries, this also applies to civil cases.

one's actions. This *foro interno* is then reflected in the external activity under discussion where one knowingly, wilfully, and conscientiously, invokes the testimony of God to attest to the statement made. This internal disposition therefore, requires in addition, a word or sign, by which this specific intention is externalized and manifested.

Oaths may be in an express or direct form, that is, when one swears by God Himself in a clear and manifest manner and, if written, they are duly signed. They may also be solemn if undertaken during a particular ceremony. There also exist implicit or tacit forms which is when one swears by created things in a manner which is outwardly unexpressed – as these bear a special relationship with the Creator. They manifest God's Majesty and the attestation of the supreme truth that He represents in a special way.

It may be interesting to note that there are also various categories of oaths - all necessarily bearing on the fidelity of the person undertaking the oath and on the supernatural element that is consequently invoked. The different types of oaths will be briefly examined below.

Through the assertory oath, one calls upon God as witness to an assertion of a past or present fact. These types of oaths are therefore affirmative statements of fact.

The promissory oath is a call upon God as witness to a resolution which one binds oneself to execute - future performance. In so doing, one makes God the guarantor of the oath's future execution therefore binding oneself before God, under pain of sin against the virtue of religion, to do what one promises to execute in the presence of God. This pledge may take several forms: a vow to God to do something in case one's request is acceded to - a *do ut des* situation; and a vow to God in favour of a third party - if one wins the lottery one allocates a substantial sum for charitable purposes. Every promissory oath necessarily includes an assertory oath as both call upon God to witness one's desire to fulfil the promise one makes; and to guarantee and pledge the future execution of the promise. Failure to perform according to the pledged promise is tantamount to sin.

The contestary oath is a simple invocation of Divine testimony which may either be imprecatory or execratory. Usually, in the former, one will end up with words like: 'So help me God', whilst in the latter, one will call upon God to be one's judge and avenger in case one commits perjury, often offering one's property; life; or even eternal salvation as pledge to one's sincerity.

There is also a difference in between a private oath and a public oath. In the former case, the oath would occur in between private individuals. An oath is public if it is required by public authorities. It may take the doctrinal form, that is, by which one declares that one upholds a given doctrine, or by which one upholds that one promises to be faithful, teach and defend a given doctrine in the future. Another form of the public oath is political. The oath here has as its object the exercise of any authority whatsoever and shows the submission one owes to such an authority. Meanwhile, oaths taken in judicial proceedings by parties to a law suit; witnesses; court experts; the confirmation, before Inquiring Magistrates, of the police statement submitted by drug users, are known as public judicial oaths.

A decisory oath is an oath by which one of the parties to a civil law suit refers back to the other party for the decision of the cause, as in the case of a plea of prescription, where the defendant swears that he does not recall being duly notified with the all-important document at issue within the legally requested time.

Other types of oaths include,

- a) *Oath ad Litem*: In case of failure of any other proof as to the value of any given object, an oath is taken on the value of the thing in dispute.
- b) *Purgatory Oath*: An oath by which one destroys the presumptions which are brought against him. By this particular means one *purges* oneself, i.e. removes all suspicions which were leveled in one's regard.
- c) *Perjury*: This occurs when one makes a promise under oath with the intention of not withholding it. It is therefore the willful and absolute violation of a just, licit and legitimate oath. By swearing to a falsehood one would be grossly disrespecting the Divine name, thereby attracting severe legal¹¹³⁶ and moral sanction.

Generally speaking, no one can dispense someone from swearing to the truth about things past or present. So too, no one can dispense someone from making true that which one has promised by oath to do in the future. Yet, the necessity of

¹¹³⁶ Criminal Code, Chapter 9 of the Laws of Malta, arts 104–109. These articles delimit and determine the scale of punishment when perjury is proved in criminal and civil proceedings. The range of punishment varies from seven (7) months to five (5) years, subject to aggravations and depending on the gravity of the case. Punishment automatically includes *general interdiction*, as well as *interdiction* from acting as witness, except in a court of law, or from acting as referee. In this latter case the period of interdiction may range from five (5) to twenty (20) years.

dispensation arises from the fact that experience teaches that what is right and useful in itself and considered in general terms, may however at times, prove to be wrong and harmful in respect to a particular given set of circumstances. Indeed, anything morally evil is incompatible with the matter of an oath. It goes without saying that if it is evil, it is incompatible with *justice*, and can therefore never be vouch-saved. Such a case would therefore admit of dispensation. Furthermore, when dispensation is admitted, the effects of what hitherto came under the oath are no longer binding. Several causes may therefore put an end to an oath. These causes may be intrinsic which include, changes taking place after the oath had been taken; and the cessation of the final cause of the oath. There may also be extrinsic causes which are to be granted by a competent authority. These include annulment; dispensation; commutation; and relaxation.

3. Historical Origins: A Brief Overview

Oaths have had a very chequered history and can be traced from biblical, right through to modern times. For reasons of space, method and structure, it is impossible to delve into a detailed analysis of the historical development of this institute. A mere cursory *excursus* will have to suffice.

3.1 From Mesopotamia and Egypt to Ancient Rome

Mesopotamian and Egyptian cultures identified the Sovereign with the Divine. Remnants of this outlook prevailed till relatively modern times where the doctrine of the Divine Right of Kings was still extensively adopted. Succinctly, this doctrine led to the identification of the oath with the name of the King or Pharaoh, and eventually, with that of the name of God. The oath therefore, soon became the fulcrum of public life and the binding force of communal existence, and was widely adopted in the various civilizations of the period.

Greek thought considered that the three basic elements to sound political life, namely, the Sovereign, the Judge and the Common Man, were each subject to the same faith. *Licurgus*,¹¹³⁷ a product of his culture, consequently held that the oath was so important to the serenity of communal life that, 'The oath is that which holds democracy together.'

The Greek *polis* did not understand individual freedom as we do today and furthermore, did not have a sense of separation of the religious from the political sphere as we should have today. The two were then inextricably intertwined! Notwithstanding this, Greek culture did not identify the Divine with the holders

¹¹³⁷ Spartan law-maker of the VIII Century B.C.E.

of Political Power and this made it possible for the gradual but long process of development towards the actual value of the oath from the political point of view.

In Ancient Rome, oaths were sworn upon the *Iuppiter Lapis*¹¹³⁸ found in the Temple of Jupiter on the Capitoline Hill. It must be remembered that in Greco-Roman mythology, Jupiter was held to be the supreme divine law-maker responsible for law and order. An aspect of this role was that of having nominees to high office swear before this stone upon investiture. Failure to do so within the legally prescribed time disqualified incumbents from assuming the functions of the office to which they had been appointed. Roman Magistrates had to take the Oath of Office before assuming their powers. This they had to do to publicly thereby affirming that they would faithfully carry out the functions of their office for the good of the State, and had to do so within five days of their appointment. Conversely, upon leaving their appointment, they were made to take a further oath affirming that *nihil contra leges fecisse*. Therefore, even though elected and proclaimed, Magistrates in Roman times could not exercise any powers appertaining to the office, like recalling a meeting of the Senate, unless they had first proclaimed the oath *in leges* fully establishing them formally in office. If one refused to take this prescribed oath, one would lose all his rights to exercise the functions of his office.¹¹³⁹

An interesting incident is that relative to this illustrious Roman general. During the First Punic War¹¹⁴⁰ he was defeated in Africa and taken prisoner by the Carthaginians. Briefly, as the war was heavily dissipating its resources, Carthage wanted to sue for peace. The Carthaginians decided to include Regulus to the delegation they sent to Rome to negotiate a treaty and at the same time conclude an exchange of prisoners. However, before leaving Regulus was made to swear that he would return to his imprisonment in case these negotiations failed. When the Carthaginian delegation arrived, Regulus neither wanted to enter Rome nor to address the Senate as he considered himself to be a mere slave to the Carthaginians. The Senate then resolved to go to him and discussions were held in the Campania region. He exhorted this august body to reject Carthage's proposals and instead, to continue the war, as at this point Carthage was not as powerful as it was when the war was started. He further urged the Senate not to release any prisoners in conjunction to his release as the Carthaginian prisoners were all in a better physical and mental condition. Regulus gave this advice when

¹¹³⁸ The Jupiter Stone.

¹¹³⁹ Interestingly enough, as late as 1880, Charles Bradlaugh was denied a seat in the Houses of Parliament in the United Kingdom since because of his professed atheism, he was judged unable to swear the Oath of Allegiance in spite of his proposal to swear the oath as a "matter of form."

¹¹⁴⁰ 264 - 241 B.C.E.

he was conscious of the fact that this would land him into serious trouble on his return to Carthage. Indeed, his friends and relatives exhorted him not to return to Carthage and instead, to return with them to Rome. Furthermore, even the chief priest declared that as the oath had been extorted from him by force, he was not bound by its constrictions. However, he preferred to return to certain death rather than not to live up to the word he had given to his enemy. This made him one of the noblest characters in history!

The *promissio iurata liberti* is another interesting occurrence which throws further light on how Rome viewed this particular institute. This was the oath by which a slave bound himself to give service to his master *after* the latter would have emancipated him. One must immediately recall that the slave was legally deprived of juridical personality and therefore could in no way enter into the legal sphere and be recognized as being the subject of rights. He could not therefore, validly bind himself under the *jus civile*.

However, to be able to surmount this grave legal obstacle, Roman law utilized this particular legal fiction offered by this institute.¹¹⁴¹ Through the use of religion, even slaves became recognized as legally fully *capax* as the slave was now bound in *conscience* to live up to his word. Repeating the oath immediately upon emancipation, he then gave rise to a valid obligation duly recognized at civil law. This meant that the master could then enforce such obligations against the slave by means of a particular action, the *legis actio per conditionem*.

It is therefore evident that Roman law held the oath in high esteem. The following maxims throw further light on this perception.

<p><i>'Juramentum est indivisibile; et non est admittendum in parte verum et in parte falsum.'</i>¹¹⁴²</p>	<p>An oath is indivisible; it is not to be held partly true and partly false.</p>
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¹¹⁴¹ The *Iusiurandum Liberti*.

¹¹⁴² 4 Inst. 279.

*'Jurare est Deum in testem vocare, et est actus divini cultus.'*¹¹⁴³

To take an oath is to call upon God as witness and is an act of religion.

*'Jurato creditur in judicio.'*¹¹⁴⁴

Credence is to be given to one who takes the oath.

*'Sed in jure jurando non qui metus, sed quae vis sit, debet intelligi; est enim jus jurandum affirmatio religiosa; quod autem affirmate, quasi Deo teste promiseris, id tenendum est. Iam enim non ad iram deorum, quae nulla est, sed ad justitiam et ad fidem pertinet.'*¹¹⁴⁵

One ought to understand not what fear there is in such an oath, but what force: for a sworn oath is a religious affirmation; and if you have promised something by affirmation with the god as witness you must hold to it. What is relevant here is not the anger of the gods, which does not exist, but justice and faith.

3.2 The Jewish Tradition and the Old Testament

The very concept of oaths is deeply rooted in Judaism and betrays specific undertones as the Jewish faith is centred on a *personalised* God. Therefore, for the Jews, an oath has a much deeper religious meaning than amongst pagans. Oaths were mostly used as a sort of oath of purification in case of injury or theft, or in case of some entrusted or found property. Indeed, oaths before judicial tribunals seem to have been very rare. The most widely used method of affirming an oath was usually that of holding a sacred object in one's hand or, that of raising one's hand high in doing so. Originally, as circumcision was the first commandment Abraham performed as a sign of subservience to God, this

¹¹⁴³ 3 Inst. 165.

¹¹⁴⁴ 3 Inst. 79.

¹¹⁴⁵ Cicero, *De officiis*, III, [104] (see Cicero, *De officiis*, in *The Latin Library*: <<http://www.thelatinlibrary.com/cicero/off3.shtml#104>> accessed 29 November 2016; and Cicero, 'On Duties' in M.T. Griffin and E.M. Atkins (eds), *Cambridge Texts in the History of Political Thought* (Cambridge University Press 1991) 140).

particular intervention was taken as the way to outwardly manifest personal recognition and approval to be subservient to God.¹¹⁴⁶

Reference to the oath is indeed found very early in Genesis after Noah and his family survived the flood. It is recorded that the first thing the survivors did was to offer some clean animals in sacrificial thanksgiving to God. On seeing this God was moved, blessed Noah, and seems to have had second thoughts as to His previous rash behaviour.

Never again will I curse the earth because of man, because his heart contrives evil from his infancy. Never again will I strike down every living thing as I have done...When the bow is in the clouds I shall see it and call to mind the lasting Covenant between God and every living creature of every kind that is found on the earth ¹¹⁴⁷

The words *never again* are commonly interpreted by scholars as serving as an oath.

Another episode from the Old Testament concerns the relationship that emerged between Abraham and Abimelech, king of the Philistines. The latter, accompanied by Philcol, commander of his army, requested a peace treaty from Abraham as the Philistines were afraid that as God was always on Abraham's side, Abraham would feel strong enough to deal falsely with them and notwithstanding the treaty, annihilate the Philistines just the same. The Philistine king wanted concrete assurance that this would not happen. He wanted to be certain that Abraham would keep his word. Abimelech therefore requested him to confirm this undertaking and,

Swear by God to me here and now that you will not trick me, neither myself nor my descendants nor any of mine, and that you will show the same kindness to me and the land of which you are a guest as I have shown to you.

Abraham acquiesced.

Soon, a minor incident concerning a well broke the peace between the two factions. Things were coming to a head until Abraham took the unprecedented step of rendering testimony to the previous oath by confirming it with consummate showmanship.

¹¹⁴⁶ Genesis 17: 9 – 14.

¹¹⁴⁷ Genesis 8: 21; 9: 16.

Then Abraham took sheep and cattle and presented them to Abimelech and the two of them made a covenant. Abraham put seven lambs of the flock on one side. 'Why have you put these seven lambs on one side?' Abimelech asked Abraham. He replied, 'You must accept these seven lambs¹¹⁴⁸ from me as evidence that I have dug this well'.¹¹⁴⁹

This is why they call this place Beersheba, because the two of them swore an oath.

Without going into further detail suffice it to say that in the Old Testament, the presumption concerning the oath is complete unadulterated faith in the living personal God. Only the oath to God is expressly commanded¹¹⁵⁰ whilst, on the other hand, only the oath by false gods is specifically prohibited.¹¹⁵¹ The oath is seen as a sign of faithful attachment to God.¹¹⁵² Therefore, whilst a special blessing from God is assured to those who faithfully swear to Him,¹¹⁵³ refusing to live up to one's oath would lead the recalcitrant into sin¹¹⁵⁴ as the obligation attached to an oath leaves no room for ambivalence. This obligation is absolute.¹¹⁵⁵ One who does not live up to his own oath attracts God's wrath.¹¹⁵⁶ It is far better not to swear at all than to swear and not live up to one's words.¹¹⁵⁷

3.3 The New Testament and Christianity

¹¹⁴⁸ It is interesting to note that this is the origin of the Hebrew word for swearing i.e. *to affirm something with seven sacrifices*. As Maltese is, like Hebrew, part of the Semitic linguistic branch, the seven lambs - *sebat ihrief* – might have given origin to the word *halef* in Maltese as the 'r' and 'l' are easily interchangeable. Obviously, linguists should look further into this intuition.

¹¹⁴⁹ Genesis 21: 27-30.

¹¹⁵⁰ Exodus 22: 10 'When a man has entrusted to another's keeping a donkey, ox, sheep, or any beast whatever, and this dies or is injured or carried off, without a witness, an oath by Yahweh shall decide between the two parties whether one man has laid his hands on the other's property or not.'

¹¹⁵¹ Exodus 20: 7 'You shall not utter the name of Yahweh your God to misuse it, for Yahweh will not leave unpunished the man who utters his name to misuse it.'

¹¹⁵² Deuteronomy 6: 13 'You must fear Yahweh your God, you must serve him, by his name you must swear.'

¹¹⁵³ Psalm 24: 3, 4 'Who has the right to climb the mountain of Yahweh,
who has the right to stand in his holy place?
He whose hands are clean, whose heart is pure,
whose soul does not pay homage to worthless things
and who never swears to a lie.'

¹¹⁵⁴ Deuteronomy 23: 21 'If you make a vow to Yahweh your God, you must not be lazy in keeping it; be sure that Yahweh your God requires it, and to withhold it would be a sin.'

¹¹⁵⁵ Numbers 30: 2 'If a man makes a vow to Yahweh or takes a formal pledge under oath, he must not break his word: whatever he promises by word of mouth he must do.' – Unmarried or married woman these are treated equally unless respectively, the father or the husband, on hearing of the oath, expresses his disapproval. Then: 'Yahweh will not hold her to it.'

¹¹⁵⁶ Psalm 15.

¹¹⁵⁷ Ecclesiastes 5: 4 'Better a vow unmade than made and not discharged.'

The New Testament represents a definite break with the past. The oath is here presented in a light which is completely different from that in which it was expounded in the Old Testament. Whilst previously the oath was seen as a religious duty, it is instead now expressly forbidden in no uncertain manner.

In this respect, two important episodes deserve mention, each reflecting Christ's central admonition that, 'Do not imagine that I have come to abolish the Law or the Prophets, I have come not to abolish but to complete them.'¹¹⁵⁸

The first is that clear and explicit rebuke uttered by none other than Christ Himself as reproduced by Matthew in the Sermon on the Mount,

Again, you have learnt how it was said to our ancestors: 'You must not break your oath, but must fulfil your oaths to the Lord.' But I say this to you: do not swear at all,¹¹⁵⁹ either by heaven, since that is God's throne; or by the earth, since that is his footstool; or by Jerusalem, since that is the city of the great king. Do not swear by your own head either, since you cannot turn a single hair white or black. All you need say is "Yes" if you mean yes, "No" if you mean no; anything more than this comes from the evil one.¹¹⁶⁰

The second is that reproduced in James where he echoes Christ's same caution, 'Above all, my brothers, do not swear by heaven or earth, or use any oaths at all. If you mean 'yes', you must say 'yes'; if you mean 'no', say 'no'. Otherwise you make yourselves liable to judgement.'¹¹⁶¹

These two episodes are clear and explicit rebukes. They do not really leave any room further argument. Man's deep reverence for God, coupled with his changed essence after absorbing Christ's teachings, have revealed the proper orientation that there should be in this regard. In this way, man must restrain himself from using the absolute essence as witness to his statements. The taking of an oath is therefore expressly forbidden. It is perhaps even suggested that to take an oath is even punishable as sinful. Therefore, even if one feels ever so sure that one is telling and affirming the truth, it is very easy to be in error, and therefore, in *sin*. This then implies that by taking an oath one would be involving none other than

¹¹⁵⁸ Matthew 5: 17.

¹¹⁵⁹ '*...noilite omnino jurare...*'

¹¹⁶⁰ Matthew 5: 33 – 37. It must be remembered here that Christ goes much further than this and makes earth shattering reference to the "Lex Tallionis", (eye for eye principle), which He condemns in no uncertain manner, commanding that when one is slapped on the face one should not retaliate but should instead unorthodoxly offer the 'other cheek'; to those who take one's tunic, one should also give them one's cloak; to those who order that one should go a mile, to go two; to those who hate their enemy, to love one's enemy and to pray for one's persecutors.

¹¹⁶¹ James 5: 12.

God Himself in one's sin! This would then really amount to presumptuous behaviour as one is actually asserting extreme trust in one's ability to be truthful, so much so, that one even calls upon oneself the judgement of God. This is a wrong towards God and is therefore subject to His punishment.

Christ's realignment indicates that man should not willingly sin against God's commandments. Instead, what Christ is inviting us to do is that we should always have God for a witness wherever we are and whatever we do. There is no need for the reformed man to make a special attempt to be truthful before the Courts or in other everyday circumstances. One should always strive to live to the highest standards of truth regardless. The oath therefore dulls this sense of commitment and actually betrays a demoralising, rather than a morally elevating, effect.

Christ's banning of the oath is therefore not granted on a legalistic orientation but instead, on a profound religious and ethical foundation soliciting us always to testify in complete truthfulness. This particular orientation therefore binds the believer to absolute obedience to Christ in full discipleship – always to live and testify in complete truthfulness – as *love* is the central feature of His religion.

Acceptance of the oath in Christianity was only achieved after considerable struggle, and even then, its acceptance was not unqualified. Indeed, the taking of oaths clearly pre-dates Christianity however, on adopting this institute it gave it a new meaning. As David Mellinkoff says,

The Church did not bring heaven and hell into England. They were already there as Old English words: Heofen as the sky and residence of the gods, hell as a place of life after death. Christianity gave new meaning to both words. Hell became a place of torment, inhabited by devils, oath breakers and other condemned souls. And it was now understood that good man might live forever in heaven. This shift of emphasis put considerable wallop into the oath.¹¹⁶²

Notwithstanding this, the leading Church Fathers, such as Origen, Gregory of Nazianzus, Tertullian, and Chrysostom, all rejected the taking of oaths most vigorously. In this regard it is perhaps Chrysostom who goes furthest calling the oath the 'snare of Satan'.¹¹⁶³ Only St. Jerome left some space for manoeuvring. He claimed that as Christ only expressly prohibited swearing by heaven, earth, Jerusalem, or by one's own head, this left room for some

¹¹⁶² David Mellinkoff, *The Language of the Law* (Boston: Little, Brown & Co. 1963) 49.

¹¹⁶³ Chrysostom: 'Do as you choose; I lay it down as a law that there be no swearing at all. If any bid you swear, tell him, Christ has spoken, and I do not swear.' (Homil. ix. in Act. Apostol.).

limited action and some oaths could therefore be made. This outlook was later adopted by a *decretum* of Gratianus and eventually even by the Popes. Athanasius, following St. Paul, further elaborated, 'I stretch out my hand, and as I have learned of the apostle, I call God to witness on my soul.'¹¹⁶⁴

Further development could only take place after the revolutionary changes that occurred in the IV Century. During this particular century Christianity was then recognized as a fully-fledged religion within the Roman Empire¹¹⁶⁵ with the Emperor¹¹⁶⁶ himself outwardly professing to have converted to the Catholic Church. Some years later, Christianity found itself transformed from an underground congregation of believers to the powerful status of being the official Religion¹¹⁶⁷ of the dominating Empire of the era.

As regards the oath, Constantine's laws were subsequently absorbed and codified in the Code of Justinian.¹¹⁶⁸ These now required every witness involved in judicial procedures to give evidence on oath. In this way, because of its social significance, the oath was soon rehabilitated amongst Christians as it was soon evident that it was in the state's very interest to reinstate it. The Church, as willing servant of the powerful state, supported and sanctioned the state's demands. The oath had by then deeply penetrated the Christian tradition and a specific coherent procedural attitude started to develop. In this way, a new political order started to evolve, with it, the positive doctrine of the Christian oath.

Meanwhile, the Germanic Tradition was based on oaths of *fealty* – loyalty – and is a direct progenitor to the notion of chivalry as this emerged later in the Middle-Ages.

4. Augustine's Orientation

Throughout his episcopal life Augustine was unable to keep his original theoretical position against oaths separate from the persistent demands of his faithful where oaths were manifestly commonplace in their daily lives.¹¹⁶⁹ In his earliest writings he pursued hard-line arguments against swearing in line with the Fathers of the Church. However, handling matters of trust and uncertainty on

¹¹⁶⁴ Apol. Ad Imp. Const.

¹¹⁶⁵ Edict of Milan 313.

¹¹⁶⁶ Constantine the Great: 312-337.

¹¹⁶⁷ In 391 Emperor Theodosius declared that Catholic Christianity was the only religion to be permitted throughout the Roman Empire.

¹¹⁶⁸ Codex Justinianus.

¹¹⁶⁹ Kevin Uhalde, *Expectations of Justice in the Age of Augustine* (University of Pennsylvania Press 2007) 13.

a daily basis as part of his episcopal mission, he was soon forced to reconcile the *theoretical* and *practical* aspects of this issue by establishing a sensible fool-proof doctrine based on solid theological foundations which both reflected his sensibilities on the issue, and the stark reality that he witnessed daily because of his duties. He was quite aware of the objections to the use oaths and hence, urged their use only in urgent situations.

His contribution to this particular sphere of activity therefore portrays him as a singular *mediator*. He not only helped in no small measure to bring about Christianity's final general acceptance of this particular institute, but in so doing, he also put an end to the considerable struggle that this issue often gave rise to. Yet, notwithstanding this, such acceptance is not unqualified.

Following in St. Paul's footsteps, who taught that oaths may only be made for *grave* and *just* reasons, and the eye opener that: 'When God made the promise to Abraham, He swore by His own self, since it was impossible for Him to swear by anyone greater...' ¹¹⁷⁰

Augustine argued, in exquisite Augustinian logic, that if God Himself took oaths, how was it possible for Him to prohibit man from doing the same? He argued that an oath too could contribute to the glory of God and could also be useful both to state and neighbour. It was therefore *permissible*, he concluded, to take oaths. It was only oaths taken in falsehood or without necessity, i.e. *falsum*, *vel sine necessitate*, that were prohibited. Furthermore, for Augustine the gravest oath one could utter was a curse against oneself, the "*exsecratio*" which takes place when one utters words like, 'If I do this, let me suffer the same.'¹¹⁷¹

By addressing the practical concerns of his flock Augustine turns the tables on the detractors of oath-taking. Through his subtle intellectual nuances, he distinguishes between acts that are merely acts of imperfection from acts that are instead acts of iniquity. In general terms he thus advanced the principle that abstention from taking oaths was always recommendable. In this regard, in answering the second objection to the question of whether it is at all lawful to swear, which become apparent from the logical *dictum* that whatever comes from evil seems to be unlawful,¹¹⁷² St Thomas¹¹⁷³ answers that oaths are required because people need to be ascertained and rests his argument by quoting none other than Augustine who held,

¹¹⁷⁰ Hebrews 6: 13.

¹¹⁷¹ Augustine, *Enarrationes in Psalmos*, 7.3.

¹¹⁷² Matthew 7: 18: '...neither can an evil tree bring forth good fruit.' In legal terms, this would be equivalent to what has become known as the theory of '*the forbidden fruit*'.

¹¹⁷³ Aquinas, *Summa Theologica*, IIa-IIae, q.89, a.1, *ad* 2.

If you have to swear, note that the necessity arises from the infirmity of those whom you convince, which infirmity is indeed an evil. Accordingly, He did not say: 'That which is over and above evil,' but 'is evil'. For you do no evil; since you make good use of swearing, by persuading another to a useful purpose: yet it 'comes of the evil' of the person by whose infirmity you are forced to swear.¹¹⁷⁴

Hence, for Augustine, the requisites for the taking of oaths are very rigorous. He concedes that an oath may be taken only if there is a necessity for its use assimilating this use to medicine – which though disagreeable, is at times indispensable! Hence, the oath, like medicine, has to be used with *judgement* and *discretion*, and only when some necessary cause arises!

One should also refrain from taking an oath if whatever one is asserting is not according to *Truth*, *Prudence* and *Justice*. The sanctity of the Divine name requires that the oath is not taken for futile reasons. In addition, if required by illegitimate civil authorities, it may also be refused.

Furthermore, oaths always involve the possibility that man may commit perjury. To avoid this grave sin Augustine holds that it is therefore just that man may be prohibited from taking oaths because of this very fact itself. The further man is from taking an oath, the further man is from committing perjury. One who takes an oath may affirm a falsehood or the truth, but one who does not take an oath can never affirm a falsehood. It is a safer stance!

This logical standpoint found widespread application even in later epochs. Canonists followed in Augustine's footsteps and held that oaths should be used only *in dubiis et necessariis*. This clarification subsequently even found place in a decree of Pope Alexander III disapproving the practice of tendering the oath to a party who had previously established his claim by documents or witnesses.

4.1 Publicola's Requests and St Augustine's Replies

Publicola was a Christian landowner who had strong commercial interests in Roman North Africa. In order for him and his estate administrators to ensure that their commercial interests would not flounder but run on solid commercial lines they had to compromise and act according to the customs of their 'barbarian' interlocutors. These employees were engaged mostly in the carriage of baggage and, in protecting extensive territories reserved for the cultivation of

¹¹⁷⁴ Augustine, *De Sermonibus Domini in Monte*, i. 17.

crops. They were thereby utilized mostly in ensuring that crops were not lost, and that time-frames for deliveries were guaranteed.

At the same time however, this relationship created a particular dilemma! In accepting the word of these people coming, from the country of the *Arzuges*,¹¹⁷⁵ Publicola and his administrators became unwilling accomplices in accepting that their commercial success would be guaranteed by means of oaths made to a false god, or even to 'demonic spirits.'

It seems that Publicola could no longer carry this issue of conscience on his own and although he seems not to have been one who relished epistolary communication, he nonetheless decided to write directly to Augustine for advice.¹¹⁷⁶ This letter is unique and betrays a rather paranoiac writer who tried to solicit as many possible answers as he could manage. Augustine's reply¹¹⁷⁷ speaks volumes on the saint's tactful behaviour and his willingness to be of complete service to his flock, regardless.

Publicola's letter contained a plethora of queries but here, the analysis is obviously limited to issues concerning oaths. He is worried that after the barbarians take their oaths by their gods they are then engaged by Roman Christian citizens as if they are trustworthy. For Publicola this created a moral dilemma. In this respect the trustworthiness and fidelity of these barbarians only resulted from this oath - an oath which in itself was considered blasphemous!

Publicola's grievous doubts emerged from the fact that this oath of the barbarians made Roman Christian citizens who engaged them, together with the crops committed to their charge, and the profits that were made from their sale, participate in the sinfulness of the barbarian oath as this very same oath is the very basis of the commercial transactions referred to. Does not this sinful oath by the false gods by which the stewards and agents secure protection of the crops defile the very crops that were intended to be protected? Subsequently, if a Christian uses the crops, or even takes the money from their sale, is he not himself defiled? And what if one comes to know of this despicable oath indirectly, how is one to behave? What type of investigation is he to undertake? Does not this oath involve mortal sin? What if the Christian entrepreneur subsequently comes to know that some portion of the wheat, beans, wine or oil, was offered in sacrifice to false gods? What if wood is taken from an idol's grove? Could a Christian buy meat when in doubt whether it had already been offered to false

¹¹⁷⁵ The people inhabiting this area probably lived around the border of modern Tunisia and Libya.

¹¹⁷⁶ This letter was written between 396 and 399.

¹¹⁷⁷ Letter 47 (also written within the same time-frame).

gods? What if some consignment of meat was thought to have been originally offered to false gods, but later someone confesses that this was not so, could a Christian use or sell that meat and keep the price? When one is overcome by hunger and finds food in an idol's temple, should he eat the food, or die?

Although some of these questions seem legitimate, the sensation the modern reader gets is that the queries adduced seem quite tendentious by modern standards. However, this might be quite an erroneous impression as one must have a full grasp of the particular cultural and historical background before coming to certain conclusions. Yet, this feeling itself seems buttressed by Augustine's opening paragraph in his reply. Be that as it may, these questions must have certainly tested this busy saint's patience to the full.

Notwithstanding this, and notwithstanding the fact that Augustine had only been bishop for some two years, he still lovingly¹¹⁷⁸ answered Publicola in a diplomatic and masterly fashion. He started by assuring Publicola that the perplexities he presented him with had become his own – however *not* because all the queries he submitted disturbed him, but because he had to answer in a way that would cancel those perplexities, thereby implying that most of the queries were not really issues of conscience that merited a reply. In this respect Augustine also seems to admonish Publicola telling him that he cannot resolve all his queries by giving him conclusive answers to everything. He even cautions him by telling him that although he might answer him to the best of his ability and 'write things which appear to me most certain,'¹¹⁷⁹ yet, Publicola might end up being more confused than before 'and though it is in my power to use arguments which weigh with myself, I may fail of convincing another by these.'¹¹⁸⁰

a) The service of one who guaranteed his fidelity by swearing by his false gods

Augustine is very pragmatic. He asks his interlocutor to consider what he would do in case one failed to keep his word after pledging himself by false gods. Would he regard this man as guilty of a two-fold sin? For if he kept his engagement which he confirmed by swearing by false gods, he would be guilty in this only. If he swore by false gods and did not keep his word, he would be guilty of two sins, i.e. that of swearing by false gods and of not keeping his word. In his conclusion, which Augustine qualifies as *obvious*, he says,

¹¹⁷⁸ *ibid* para 1.

¹¹⁷⁹ *ibid* para 1.

¹¹⁸⁰ *ibid* para 1.

<p><i>'...sine ulla dubitatione minus est per deum falsum iurare veraciter, quam per Deum verum fallaciter.'</i></p>	<p>'that in using, not for an evil work, but for some good and lawful end, the service of a man whose fidelity is known to have been confirmed by an oath in the name of false gods, one participates, not in the sin of swearing by the false gods, but in the good faith with which he keeps his promise...it is beyond all doubt, worse to swear falsely by the true God than to swear truly by the false gods for the greater the holiness by which we swear, the greater is the sin of perjury.'</p>
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b) The service of one who requires others to pledge themselves by taking oaths in the name of their false gods

Here, Augustine refers to the example of Laban and of Abimelech, (the former swearing by his god Nahor; the latter by his gods), reproduced by Publicola himself in his letter. Referring to Christ when he is reported to have said '*...noilite omnino iurare...*'¹¹⁸¹ Augustine emphasises that these words were, 'spoken, not because it is a sin to swear a true oath, but because it is a heinous sin to forswear oneself: from which crime our Lord would have kept us at a distance, when He charged us not to swear at all.'

At this point he even reminds Publicola that he does not remember reading anything in the Scripture that one is not to take another's oath!

c) Whether social harmony is established by exchanging oaths

In his reply Augustine holds that if one were to answer in the negative, then it will be well impossible to find a place on earth where one could live. This is so because the security of peace only rests on the oaths of barbarians. In fact, it is not only at the frontier, he says, but also in the provinces that peace is

¹¹⁸¹ *ibid* para 2.

established through the oaths submitted by the barbarians. Their oath was not only, not a cause of any damage but, was actually beneficial.

And from this it would follow, that not only crops which are guarded by men who have sworn fidelity in the name of their false gods, but all things which enjoy the protection secured by the peace which a similar oath has ratified, are defiled.¹¹⁸²

As Pietro di Giovanni Olivi held, one had to distinguish between *faith* and *good faith*. The former was to be understood as a *cult*, the latter, as *fidelity* to what was promised. Therefore, one who swears by false gods commits the sin of idolatry but, at the same time expresses good faith which might have in it some positive consequence. To clarify this outlook, he compares the oath to conjugal love. The latter, he maintains, contains three goods: generation of off-spring; extinction of conjugal debt; and remedy to worse evils. The former, may also contain three goods; confirmation of the oath; voluntary obligation, or custom, to bear witness to the truth of what one says; sentiment of reverence that exists when one calls God as witness.

d) Concerns on the fruits, (wheat, oil, meat, olives, and revenue arising from their sale), offered to false gods

If anything is taken with the permission of their Christian owner to be offered to false gods, then he is guilty in permitting this to be done. If he could have prevented such utilization but did nothing to stop such use, then he is guilty. If, on the other hand, this had happened without his knowledge or that when this happened he had no power to prevent it, then he should not scruple from using the rest. Here, Augustine seems to be reaching the limits of his prudent patience when he says,

For we have no scruple about inhaling the air into which we know that the smoke from all the altars and incense of idolaters ascends...when... the spoils of these places are applied to the benefit of the community or devoted to the service of God, they are dealt with in the same manner as the men themselves when they are turned from impiety and sacrilege to the true religion.¹¹⁸³

He finally admonishes Publicola and instructs him to study St. Paul reminding him that the Apostle himself had no scruples in eating while in Athens even though the city was consecrated to Minerva. He finally warns him to be aware of

¹¹⁸² Letter 47 para 2.

¹¹⁸³ *ibid* para 3.

holding as good what is evil as this would be a sin of ignorance in which one thinks to be right that which is objectively wrong.

5. Conclusion

As oaths already formed part of man's psyche well before Christianity appeared in history, Augustine's practical outlook on the whole issue positively mitigated his original theoretical position. In practice, he realised that all that mattered was the active bond that existed between the human and the Divine. This bond helped to protect fidelity, uncover deception and punish transgression for the common good which is that benefit society acquires in this regard from the social cohesion that results – a *socialis necessitudo*.

When St. Thomas¹¹⁸⁴ analysed this exchange of letters between Publicola and Augustine he concluded that Christians did not have to worry about sharing someone's sin. Augustine emphasized all along that the most important issue in this institute was that it stood for public credit. What people of different creeds were doing when they accepted their reciprocal oaths by their different deities was to exchange the same currency of fidelity.

The legacy that Augustine has transmitted to future generations is that in this sphere one had to focus on the sanctity attached to the Christian oath as this involves none other than God Himself bringing Him squarely into the human equation. Through his almost paranoid letter Publicola might have been uncompromisingly assiduous but, all the same, he helped to give Augustine the opportunity to draw the notion of the taking of oaths out of the theoretical sphere and project it into the practical realm of everyday life. Luckily, Augustine felt obliged, in love, to analyse the issues presented before him – enriching us without end.

¹¹⁸⁴ Aquinas, *Summa Theologica*, IIa-IIae, q.78, a.4, r.